



21 October 2016

The General Manager  
Port Stephens Council

DA 16-2016-631-1 ASCENT APARTMENTS, Lot 17 and Lot 18, DP 8611  
11 – 13 Church Street, Nelson Bay NSW 2315: Objection

## Introduction

Tomaree Ratepayers and Residents Association Inc. (TRRA) submits that approval of such a significantly non-compliant development (more than twice the applicable height limit and a very high density), would be inappropriate given the current stage of strategic planning for the Nelson Bay town centre.

We hope that the applicant would be willing to defer their application until at least the conclusion of the current review of the Nelson Bay Strategy. We recommend deferral<sup>1</sup> rather than refusal, but if this is not possible, refusal is the only other acceptable outcome at this time.

A review of the 2012 Nelson Bay Strategy is currently under way with Council staff engaging with interested parties. We note that the current Strategy, adopted by Council in 2012, is non-binding guidance, and that Council declined the opportunity to implement many of its recommendations in the formal planning instruments which were revised after that date – the LEP in 2013 and the DCP in 2014.

Height limits in particular were not changed in the LEP, despite the Strategy concluding that some variation was appropriate. This DA must therefore be assessed primarily against the development standards set out in the LEP and DCP (and any relevant SEPP). The LEP height limit for this site is 15 metres and the proposed development between 29 and 32.9 metres)

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<sup>1</sup> We note that there appear to be precedents for deferring approval – we understand approval of the Tourist Facility at 21 Cabbage Tree Rd, Williamstown, opposite McDonalds (DA 16-2013-275) was held up until results from the Williamstown Flood Study were available - submissions closed 13/6/13, but the DA was not approved until 10/11/14 some 17 months later.



The applicant has based most of its arguments for height and other variations from the development standards on the 2012 Strategy, but this is not itself a development standard. TRRA submits that while the 2012 Strategy may be relevant, it cannot be given the weight the applicant seeks, particularly when it is itself currently under review.

### **A welcome initiative**

While we oppose approval of this DA at this time, TRRA welcomes the positive approach the applicant has taken to bring forward a proposal designed to attract permanent residents, with a focus on good design, and the applicant's proactive engagement with interested parties, including TRRA, since early this year. The proposal has a number of interesting and attractive features.

We accept that there is a long-standing need for property development investment in the Nelson Bay town centre, and that the numerous vacant sites, of which this is one, badly need development if the town is to emerge from a long period of under-activity. However, TRRA believes that the community should not accept developments that significantly depart from agreed development standards just because applicants assert that their proposals need to be of a particular size and character to be commercially viable.

The current review of the Nelson Bay Strategy provides an appropriate forum for evidence to be put forward to support changes from the current approved standards. We understand that Council staff are seeking to obtain such evidence from economic modelling of various height and density options for particular sites. We submit that the review also needs to look at comparable centres elsewhere in NSW, and their experience in attracting investment in new development without compromising their character.

In the case of Nelson Bay, there appears to be a general consensus, expressed in the 2012 Strategy, that building height is a critical factor in the character of the town, set in a natural amphitheatre surrounded by wooded hills. This character contributes to its attraction as a tourist destination – its main economic base – as well as to the amenity enjoyed by permanent residents of the Tomaree peninsula.

While there will be different views about what heights are acceptable, we suggest there is a very clear community perception that tall towers, such as are found in many other coastal towns (such as at Forster-Tuncurry, to give just one nearby example) would irreversibly destroy the character of Nelson Bay.

Many of the applicant's detailed justifications in support of their proposal are legitimate and well-argued considerations for the review of the Strategy and then for potential

amendments to the LEP and DCP. However, they are not, in our view, persuasive for a one-off ad hoc major variation to existing development standards.

### Detailed comments on the application

The **Executive Summary** of the SoEE asserts that:

‘The proposal has undergone extensive consultation with community and Council and is considered to align with the public vision for the area.’

We submit that this conclusion is premature, given the current stage of review of the Nelson Bay Strategy.

The Executive Summary also asserts a number of ‘strategic public benefits’ which the supporting documentation uses to justify variations under Clause 4.6 of the LEP, by reference to the ‘significant public benefit’ criterion suggested in the Nelson Bay Strategy as one condition for ‘extra’ height or bulk.

We submit that all of the benefits listed are no more than the normal benefits that would accrue from any reasonable development proposal for this site. The ‘significant public benefit’ criterion was agreed during the development of the Strategy to mean ‘extras’ such as conference facilities or public open space (Strategy, p.65). TRRA would expect that one way of satisfying this criterion would be through a voluntary planning agreement (VPA) – we note that the SoEE states that no planning agreement is proposed (p.41).

**SEPP 71 compliance.** We disagree with the applicant’s conclusions in relation to criteria (d), (e) and (f) of Clause 8. In our view, the height of the proposed building is likely to have a detrimental impact on the coastal character and views.

**PS LEP 2013 compliance.** The applicant acknowledges that the proposal is non-compliant with the height limits in the LEP and seeks to justify the very significant variation. We note that the tables on pages 20 (and 38) of the SoEE states the height as 24-29 metres when Appendix 4 pages 4 & 5 states that the proposed height varies between 29 and 32.9 metres. Whichever is correct, the upper end of both of these ranges represents close to a doubling of the current permitted height.

The applicant’s detailed arguments for an LEP Clause 4.6 variation are set out in Appendix 4 to the SoEE. We have not at this stage sought to address these detailed arguments as we consider them as more suitable for discussion in the context of the review of the Nelson Bay Strategy.

If Council is minded to approved this DA, we would appreciate a further opportunity to address the detail in Appendix 4 – even with the extension of time granted for this submission, it is unreasonable to expect us to be able to undertake this detailed assessment of this 90 page document in less than a month.



**Density:** One important issue that will need to be revisited in the review of the Nelson Bay Strategy is the role of Floor Space Ratio (FSR) standards. Port Stephens Council justified the omission of FSR controls from the 2013 LEP on the basis that a combination of height limits and other remaining controls could achieve the same objectives. If height limits are to be significantly increased (either in an LEP amendment or by 'ad hoc' clause 4.6 approvals), we submit that the need for FSR controls needs to be revisited. We note that elsewhere in NSW, medium density residential zones have relatively low FSR limits. For example Waverly Council's R3 medium density zoning has an FSR of 0.9:1 and its R4 'high density' zones an FSR of only 1.5:1. Similarly, Cronulla R3 zones typically have an FSR limit of 0.7:1, and its R4 zones between 1.2:1 and, in only a few locations, 3:1. Terrigal's R3 zone is mostly 1.8:1 with one block at 2.3:1.

We note that this proposal for Church St is for an FSR of **2.8:1** (table in Location and Site Plan). This places it at the higher end of FSR even for R4 'high density residential' zones in the LEPs applying to many NSW coastal towns, and yet this site is only zoned R3, which elsewhere typically has limits of less than 1:1.

It appears that in some of the most densely populated LGAs that have allowed some high rise buildings, FSR and height limits have been used **together** to protect public amenity e.g. in respect of sunlight, wind tunnelling effects, public space, and movement corridors. We submit that notwithstanding the lack of any FSR controls in the PS LEP 2103, density is a very significant consideration.

**PS DCP 2014 compliance.** We note that the DCP cannot 'trump' the standards in the Apartment Design Guide (SEPP 65), and that the applicant has given detailed information about how the proposal meets the applicable standards. TRRA does not have the resources or expertise to assess these claims, but assumes that Council planners and engineers will verify them.

We note that the applicant has referenced *some* features of the Nelson Bay Strategy, (and of the DCP Chapter D5 to the extent that they have been incorporated) which support their application, but not others, such as the provisions for setbacks of upper floors, which their proposal does not meet. We are also concerned that the proposed development may not protect the view corridors identified as important in the Strategy (and DCP), or other significant views, such as the view out to the Bay from the Nelson Bay Bowling Club and Landmark apartments.

We welcome the decision to refer this application to an 'independent' Urban Design Consultative Group for comment. This accords with the provision in the 2012 Nelson Bay Strategy allowing for variation of height or bulk (p.65) for developments that 'exhibit outstanding design excellence'. We note however that this sits alongside a second condition 'provides a strategic public benefit' ('and', not 'or') – and we have already commented above on our understanding of the meaning of this second test.

We also submit that even satisfying both 'design excellence' and 'strategic public benefit' are necessary but not sufficient conditions for approval of variations – all of the other criteria in the LEP and DCP also need to be addressed.

**Strategic Planning Considerations.** The SoEE puts forward extensive arguments for how the proposal accords with a variety of policies and reports. As we have already stated above, we regard these arguments as entirely appropriate for a review of the Nelson Bay Strategy now under way and any subsequent proposals for amendments to the LEP and DCP. We submit however that they are not persuasive as justification for a one-off, ad hoc major variation from current development standards. The proposal is premature.

In relation to the repeated argument about the balance of permanent vs short stay accommodation, we observe that there appears, regrettably, to be no way of guaranteeing that any apartment development will in practice be occupied by permanent residents. While the size and design quality of units may influence the resulting demand, there is nothing to stop any purchaser choosing to use their property for short stays only, or from renting it out as holiday accommodation. We observe that there are already several 'high quality' apartment buildings in the town centre with very low permanent occupancy.

TRRA would like to see more permanent residents, and would welcome any controls or incentives that could achieve this outcome, but in the absence of any guarantees, we submit that arguments that this proposal would necessarily result in more permanent residents should not be given much weight.

### **Precedent effect**

TRRA is very concerned that approval of this proposal, despite its major variation from current development standards, would set a very undesirable precedent. It would be very difficult, subsequently, for Council to resist other applications for up to a doubling of heights on other sites in the town centre.

Conversely, approval of a high building on this site may limit higher developments on other sites (including the two Council owned car park sites in Donald St) if future occupants of the 'Ascent Apartments' were able to successfully claim that their views were negatively impacted by proposed new developments elsewhere in the town centre.

Approval would fatally undermine the current process of seeking a community consensus on a vision for the future of Nelson Bay, and on appropriate changes to the current planning instruments and development standards.

## Conclusion

We emphasise our willingness to engage with the case made by the applicant for major variation from current development standards, but in the context of the current review of the Nelson Bay strategy, rather than a one-off ad hoc proposal.

We would much prefer that assessment of this proposal be deferred, preferably by agreement with the applicant, pending at least the conclusion of the current strategic planning review for the Nelson Bay town centre.

If deferral is not possible, we reluctantly have to object to the proposal and urge Council to refuse it.

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